



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

March 15, 2004

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Gary and Virginia Houston v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 249 765

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$210,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Public Works.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosures

MEMORANDUM

March 4, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: GREG HOULE
Houle and Houle

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: Gary and Virginia Houston v. County of Los Angeles
Los Angeles Superior Court Case No. BC 249765

DATE OF
INCIDENT: May 10, 2000

AUTHORITY
REQUESTED: \$210,000

COUNTY
DEPARTMENT: Department of Public Works - Sewer Maintenance

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2004

SUMMARY

This is a recommendation to settle for \$210,000, a lawsuit for dangerous condition of public property and inverse condemnation, filed by Gary and Virginia Houston, whose home was damaged by sewage that flowed under their home from a sewer line maintained by the County.

LEGAL PRINCIPLES

A public entity is liable for injuries caused by a dangerous condition of its property if the property was in a dangerous condition at the time of the injury, the injury was caused by the dangerous condition, the dangerous condition created a foreseeable risk of the type of injury that was suffered, and the public entity had actual or constructive notice of the dangerous condition.

A public entity is liable under the law of inverse condemnation for damage caused to property, when the damage was caused by a public improvement as deliberately designed, and constructed by the public entity, whether or not the damage was foreseeable. Inverse condemnation liability can be based on an improper maintenance plan of the public entity. A prevailing plaintiff in an inverse condemnation action is entitled to an award of reasonable attorney fees.

SUMMARY OF FACTS

On May 11, 2000, in the unincorporated area of the Palos Verdes peninsula, a County maintained sewer line flooded into the lateral sewer line of Gary and Virginia Houston, and flooded the area underneath their home. The sewer line had become clogged by tree roots in the neighborhood, which caused the sewage to travel into the lateral sewer line.

The sewage spread throughout the crawl space under the home, and caused extensive damage to its foundation. The flooding caused the floors in the home to buckle, which in turn caused cracks in the walls and ceilings.

The County had a sewer maintenance plan in place in the neighborhood that consisted of regular visual inspections of the sewer line. The sewer line had been inspected one month prior to the incident, and no stoppages in the sewer line were seen. Since the incident, the maintenance plan has been upgraded, and periodic foaming of the sewer line will take place to minimize root growth from entering the main sewer line.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Property damage repair	\$ 91,000
Diminution in property value	\$ 400,000
Emotional distress	\$ 200,000
Attorney fees and costs	<u>\$ 300,000</u>
Total	<u>\$ 991,000</u>

The proposed settlement calls for the County to pay Gary and Virginia Houston \$210,000 for all of their claims for damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this action are attorney fees of \$131,009 and \$102,006 in expenses. The costs and fees are relatively high because the case had to be fully prepared for trial. We hired twelve experts in preparation of trial. Our attorneys retained two plumbing experts, a sewer maintenance expert, an arborist, a contractor, a mold expert, a medical expert, a real estate appraiser, and others, to counter the claims made by Gary and Virginia Houston and their designated experts.

In addition, the law firm originally assigned to represent the County was replaced after it declared a conflict of interest with respect to a cross-defendant that was brought into the case.

Gary and Virginia Houston's settlement demand was in excess of \$500,000, until the last mediation in this case when the proposed settlement was reached.

EVALUATION

This is a case of disputed liability. The dangerous condition allegation does not pose a threat of liability, as the County did not have actual or constructive notice of the tree roots in the sewer line. However, a jury could find that the County's sewer maintenance plan was defective because the visual inspections were not sufficient to detect or prevent tree roots in the sewer line. If

the jury finds the plan was defective, the County would be liable under the inverse condemnation cause of action.

A reasonable settlement at this time will avoid further litigation costs, and a jury verdict, along with attorney fees, that could exceed the proposed settlement.

We join with our private counsel, Houle and Houle, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$210,000.

APPROVED:



GARY N. MILLER
Assistant County Counsel

RHG:scr

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

Facility: City of Palos Verdes Estates Mainline sewer fronting 409 Avenida Mirola.

Name: Gary Houston vs. County of Los Angeles

Case No. BC 249765

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RISK MANAGEMENT ISSUES:

	ISSUES
<input checked="" type="checkbox"/> Systems <input type="checkbox"/> Personnel	<p>This is an inverse condemnation case. On May 11, 2000, a restriction in the City of Palos Verdes Estates mainline sewer caused sewage to back up in the homeowners lateral at 409 Avenida Mirola. The homeowners plumbing was badly deteriorated and the toilet was not properly installed. The back up exited the pipes and caused separation from a plumbing fixture within the residence. The sewage overflowed into the crawlspace under the residence. A Waterworks & Sewer Maintenance Division crew responded to the incident and rodded the mainline sewer to restore flow. The Consolidated Sewer Maintenance District maintains the subject sewer per the City's consent and resolution.</p>

INVESTIGATIVE SUMMARY:

DATE	INVESTIGATION
May 11, 2000	The Department received a service request regarding a plumbing problem at 409 Avenida Mirola in the City of Palos Verdes Estates. A Public Works sewer maintenance crew arrived and observed wastewater overflowing the manhole. The crew rodded the sewer line and broke down a root restriction, returning the mainline sewer flow to normal. The crew observed flooding within the crawlspace under the residence at 409 Avenida Mirola.
May 16, 2000	DPW Sewer Maintenance crew video taped the sewer and observed roots and grease buildup in the mainline sewer.
November 6, 2000	Plaintiff filed a claim for damages with the Los Angeles County Board of Supervisors.

CORRECTIVE ACTIONS (System)

System	Corrective Action	Date Completion
City of Palos Verdes Estates sewer line fronting 409 Avenida Mirola.	<p>Corrective actions have been undertaken by the primary parties involved in this claim as detailed below:</p> <ol style="list-style-type: none">1) The homeowner at 409 Avenida Mirola repaired the deteriorated plumbing and properly connected the fixtures to the household plumbing.2) The City of Palos Verdes Estates has initiated a comprehensive sewer rehabilitation program to repair all damaged and deteriorated mainline sewers within the City.3) The Consolidated Sewer Maintenance District has placed the sewer line fronting 409 Avenida Mirola on a periodic root foaming program to minimize root growth from entering the mainline sewer. <p>This cumulative corrective action taken on behalf of the parties involved should eliminate any potential reoccurrence.</p>	<p>2000 Calendar Year.</p> <p>10 year program initiated in 2003.</p> <p>18-month foaming periodic. Last performed on February 17, 2004.</p>

KL:ag
CORRECTIVE